SPEECH

OF

MR. DOUGLAS, OF ILLINOIS,

IN REPLY TO MR. SOULÉ,

RELATIVE TO THE PUBLIC LANDS IN CALIFORNIA.

DELIVERED

IN THE SENATE OF THE UNITED STATES, JUNE 26*th* and 28*th*, 1850.

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THE PUBLIC LANDS IN CALIFORNIA.

In reply to the argument of Mr. SOULE, relative to the Public Lands of the United States in California—

Mr. DOUGLAS said:

Mr. PRESIDENT: I propose to reply to so much of the argument of the Senator from Louisiana [Mr. SOULE] as relates to the public lands of the United States within the limits of the State of California. I feel it to be my duty to do whatever I may be able to vindicate the bill against the charge, that, in the shape in which it came from the Committee on Territories, or with the amendment subsequently offered by way of abundance of precaution, the lands would escheat to the State of California, and that the United States would be divested of their title. I shall not occupy the attention of the Senate in discussing many other topics which were argued by the Senator from Louisiana. What few words I may have to say upon the question of boundary will be said when an amendment which I laid upon the table a few days ago may be taken up for action.

Now, sir, in regard to the position of the Senator from Louisiana, that, under this bill, if it become a law, the lands there will escheat to the State of California. The argument by which the Senator attempts to maintain that position rests entirely upon the assumption that each State of the Union is an absolute sovereignty, and that sovereignty necessarily includes, and is inseparable from, ownership of the soil. I do not deem it necessary, for the purpose of this argument, to inquire how far the States of the Union are sovereign. I understand that a sovereignty can do any and all acts not prohibited by the laws of nations or the laws of God. There are many acts that the States of the Union cannot perform, which do not come within these exceptions—many acts which involve the highest attributes of sovereignty; such as making war and peace, coining money, regulating commerce, and a great variety of other powers vested by the Constitution in the United States.

But, sir, I will not occupy time upon this point of sovereignty. The States of the Union may be said, if I may be permitted to use such an expression, to be limited sovereignties; that is to say, they are sovereign within the sphere of their appropriate duties, and to the extent that they are not restrained by the Constitution. But passing to the latter part of the proposition, which implies that sovereignty necessarily includes ownership of the soil: This proposition is attempted to be maintained by quotations from Vattel. It is not my purpose to question the high authority of that author; but it should be borne in mind that Vattel wrote of the laws of nations and the principles of government as they existed at the time he lived. At that period the feudal system was in its full vigor. It constituted the basis upon which all European governments were constructed. According to the theory of that system, the sovereign was the owner of all the soil within his dominion. He divided out his territory among his nobles who became his vassals, and held it on condition of rendering military or other service, and those nobles divided it again between their vassals on like conditions. Hence the sovereign was understood, at least by a fiction of law, to be the owner of all the soil within his kingdom, although others held it in possession. And, sir, Vattel was speaking of that system when he indited the passage which has been quoted from his work to sustain the position now assumed by the Senator from Louisiana. I have only to remark, then, that the feudal system is not in existence here. It was swept away by the Revolution, and the last vestiges of it are gone. All of our titles are allodial. We hold our lands by fee-simple tenure, entirely independent of the Government, and without any condition of the rendering service or paying homage therefor.

Now, Mr. President, when we come to consider this question with reference to the States of this Union, we have never acted upon the principle that ownership of the soil is an essential ingredient of sovereignty, not even before the adoption of the Constitution of the United States. Some States of the Union were permitted to hold land within the boundaries of others—as Connecticut did within New York, and subsequently in Ohio, and as Massachusetts now does within the State of Maine. In other States, boards of proprietors, whose titles were acquired prior to the Revolution, continued to hold the public domain, and do at this day, as is the case in New Jersey. Hence, sir, we have never acted upon the principle that the sovereignty necessarily includes the ownership of the soil. When the Revolution took place, and a new system of government was called into existence, all the vacant and unappropriated lands within the different States of the Union be-

came the property of those States, for the palpable reason that there was no other owner.

But the operation of this principle only extended to the vacant and unappropriated lands, and divested the title of no person or power on earth except England and her adherents, with whom we were at war. The only dispute that arose in regard to these lands had reference to the territory northwest of the river Ohio. That territory, or at least portions of it, was claimed by various States as being within their respective limits. Nearly all their charters from the British Crown in terms extended westward, according to the courses indicated, indefinitely to the South Sea or Pacific. When the geography of the country came to be better understood, and the boundaries of the colonies, or States, as they are now called, were ascertained, it was discovered that in the territory alluded to they ran across and into and lapped over each other, so that the same district of country was actually embraced within the chartered limits of three or four different States. This difficulty was solved and the dispute amicably settled, upon the recommendation of Congress, by a cession by Virginia, New York, Connecticut, and the other States interested, of said territory to the United States. I have in the volume before me all these deeds of cession, which vest in the United States the title to all the lands in the territory northwest of the Ohio.

From this review, it will be seen that the United States Government, which is the largest land owner perhaps in the world, has never held one foot of land by virtue of its sovereignty. Sovereignty was not the title by which we have claimed or held one acre of our public lands. We hold the lands by virtue of the same title that an individual possesses his own estate. The Government holds its lands by deeds of conveyance. In the case of the Northwest Territory, she held it by the deed of cession, to which I have referred. In the case of Tennessee, she held it by the deed of cession from North Carolina. In Mississippi and Alabama, she holds the lands by a deed of cession from Georgia. In the Louisiana territory, including the States of Louisiana, Arkansas, Missouri, Iowa, and the vacant territory, she holds the lands by cession from the Government of France. Florida she acquired by cession from Spain, and New Mexico and California by cession from the Republic of Mexico. Hence all of the public lands are held by the Government by purchase, by cession, by deed of conveyance, upon an adequate consideration, the same as any individual holds his estate, and not by virtue of the sovereignty of the nation.

Now, having acquired our title to the lands by this mode, the next question which arises is, whether the United States can hold and dispose of them. The Constitution of the United States itself answers that inquiry. That instrument provides that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." This provision authorizes the United States to be and become a land owner, and prescribes the mode in which the lands may be disposed of and the title conveyed to the purchaser. Congress is to make the needful rules and regulations upon this subject. The title of the United States can be divested by no other power, by no other means, in no other mode than that which Congress shall sanction and prescribe. It cannot be done by the action of the people or Legislature of a Territory or State. These are modes unknown to the Constitution. It cannot be done under the clause of the Constitution which provides for the admission of new States; for another portion of the same instrument confers the power, and points out the mode of its exercise in express terms, which excludes the idea that the same power can be derived by implication from another portion of the Constitution. Hence the admission of a State into the Union under the clause concerning new States cannot be construed as an alienation of the public lands. The title of the United States cannot be divested under that clause of the Constitution. Under it the State may be admitted into the Union; but still it would be necessary for Congress, under the other provision of the Constitution to which I have referred, to "make needful rules and regulations," in order to transfer the public lands. The right to alienate the lands cannot be derived from any other source. It cannot be drawn from any other portion of the Constitution—much less from the civil law or the decree of the King of Spain. This question has been settled, by authority and precedent, as fully and conclusively as it is possible to settle any principle of law by the legislation of the country, the decisions of the courts, and the practical operation of the Government, in all its departments, during its entire history. I propose to review in detail our legislation upon this subject, that it may be seen that the Committee on Territories did not act unadvisedly or recklessly when they directed me to bring in the bill for the admission of California without any provision in relation to the public lands. The Senator from Louisiana has assumed, and predicated his argument on the assumption, that, with the exception of Arkansas, the precedents justify the conclusion that the admission of a State, without any compact to the contrary, operated as a forfeiture of the lands to the State thus admitted. He assumed this to have been the current of authority upon this question, without deeming it necessary to investigate our legislation, and see how the records present the facts. It will be my purpose to inquire into these different cases, to see how far our legislation will justify him in that assumption.

And, first, I have to remark that the question is not a novel one. It has been a thousand times decided—judicially decided. For, ever since the admission of Tennessee into the Union in 1796, the Government of the United States has been disposing of the lands within the limits of the States thus admitted, giving deeds to the purchasers, and those purchasers have been prosecuting suits in our courts by which they enforce their title. Each and every case of ejectment, or any other form of action in which the title of land was involved, which has been brought in these new States, is a case in point, testing the validity of the title of the United States within the limits of those States after their admission into the Union. If, therefore, there has been one case (and who does not know that there have been thousands?) where after a State has been admitted into the Union, without any compact reserving the lands, the United States has sold them, and the title of the purchase has been adjudged valid, that one case is conclusive of the question.

I will first call your attention to the admission of Tennessee. I begin with it, because it was the first State ever admitted into the Union where there were public lands. The territory was ceded by North Carolina to the United States, in 1789, for the purpose of being admitted into the Union as one or more States. Here is the act of admission, and the only act on the subject.

[Mr. D. here read the act for the admission of the State of Tennessee into the Union, approved June 1, 1796.]

There, sir, you have the entire act. There was no compact, no ordinance by which the State of Tennessee agreed not to interfere with the primary disposal of the soil; none that the State would not tax the lands of the United States; no stipulation, no condition, no compact or contract touching the subject-matter. It was a simple act of admission into the Union on an equal footing with the original States in all respects whatsoever. Now, I put the question to the Senator from Louisiana: Did that act forfeit the title of the United States to the lands within the State of Tennessee? If so, that gallant State never yet was wise enough to know her rights and claim the lands. No lawyer was ever astute enough to comprehend the point by which he could defeat his adversary, in an action of ejectment, where the plaintiff must rely upon the strength of his own title: the courts have been so blind that they entirely overlooked it, and for nearly sixty years all the departments of her government have gone on sanctioning and recognizing those titles, executed by the Government of the United States, as being conclusive to the lands within the State of Tennessee.

I pass now to the next case. The next State admitted was Ohio. It has been referred to as having contained a compact with the Government of the United States, securing the title to the public lands. There seems to have been a misapprehension upon this point, not only in reference to Ohio, but in regard to most of the new States of the Union. I have often heard the compacts with those States referred to as having secured to the United States the title to the public domain. The impression seems to prevail to some extent, not only that such compacts actually exist, but that they were entered into as conditions upon which those States were received into the Federal Union; whereas, in fact, there are no such compacts except in two cases, and those were entered into under peculiar circumstances, and with reference to entirely different objects, as I will show before I conclude. But to return to the case of Ohio. The act was passed on the 30th of April, 1802. The first section authorizes the inhabitants "to form for themselves a constitution and State government, and to assume such name as they shall deem proper, and the said State, when formed, shall be admitted into the Union, upon the same footing with the original States in all respects whatever."

The second section prescribes the boundaries of the new State. The third, fourth, and fifth sections direct the mode of electing and organizing the convention. The sixth section provides that until the next general census the said State shall be entitled to one representative in the Congress of the United States. We now come to the seventh and last section, which is the one that bears directly upon the point under discussion. And as it is the original from which the acts authorizing the admission of nearly all the other new States were copied, I will read it:

"7. *And be it further enacted*, That the following propositions be, and the same are hereby, offered to the convention of the eastern State of said territory, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States."

Then follow the three propositions:

1st. That Congress will grant the 16th section in each township for schools.

2d. A grant of the six miles reservation, including the Salt Springs, to the State.

3d. One twentieth part of the net proceeds of the sales of the public lands lying within said States, to be applied in making roads leading to the Atlantic.

Then comes a proviso in the following words:

"*Provided, always*, That the three foregoing propositions herein offered are on the conditions that the convention of the said State shall provide, by an ordinance irrevocable without the consent of the United States, that every and each tract of land sold by Congress, from and after the 30th day of June next, shall be and remain exempt from any tax laid by order or under authority of the State, whether for State, county, township, or other purpose whatever, for the term of five years from and after the day of sale."

Here you have the whole act. The first section admitted the State into the Union on an equal footing with the original States in all respects whatever, without any subsequent legislation. This being done, Congress, in the seventh section, tendered certain propositions to said State for her "*free acceptance or rejection.*" The State was at liberty to do the one thing or the other—to accept or reject—and in either event she remained in the Union. If she accepted the propositions, she became entitled to the school lands, the Salt Springs, and five per cent. of the net proceeds of the sales of the public lands. But if she rejected them, she lost all these donations; still remaining, however, a member of the Confederacy. These propositions for a compact, therefore, were not tendered as conditions to her admission into the Union, but as the only terms upon which she could receive the donations of land and money. The "proviso" declares "that the three foregoing propositions herein offered are on the conditions that"—

What are the conditions? Not that the State will never interfere with the primary disposal of the soil—not that she will disclaim all right to the public lands within her limits—not that she will never tax the lands and property of the United States: none of these subjects are mentioned or alluded to. It seems to have been taken for granted that none of these things were necessary. But it was deemed necessary to stipulate that "every such tract of land SOLD by Congress" should remain exempt from taxation "for the term of five years from and after the day of sale." Congress deemed this stipulation important, and hence it was inserted as the condition upon which the State could receive her school lands and the other gratuities. The great importance of this provision to the Government of the United States is apparent when we look into the history of our legislation of that day. Prior to 1820 the public lands were sold on a credit at two dollars per acre, and the purchaser made his payments in instalments. But for this provision the lands would have been taxable from the day of sale, and, in default of the payment of the taxes, the State might have sold them and secured tax titles to them before the United States would have received the purchase money.

To guard against this contingency, Congress imposed the condition, and required the State to assent to it before she could receive her school lands, salt springs, and five per cent. of the proceeds of sales. For the same reason you will find compacts containing this condition with all the new States admitted from that time up to 1820, when the credit system was abolished, and consequently the necessity for this stipulation ceased. I have all the acts before me, and have examined them critically, and find that, during that period, no new State was permitted to receive the sixteenth sections for schools and the other usual donations without being required first, in the most formal manner, to enter into this stipulation. Since the credit system was abolished, there has been a carelessness, and in some instances an omission to enter into any compact at all, from the conviction that it was entirely unnecessary. I will briefly refer to each one of these acts, in order to show that I am correct in the principle I deduce from them.

The act authorizing Indiana to form a constitution and State government, and to come into the Union, was copied from that of Ohio, with some slight variations. The first section provides for her admission "on the same footing with the original States in all respects whatever." The sixth section tenders propositions for "free acceptance or rejection." The first three are the same as those of Ohio, but Congress was liberal enough to add two others, to wit: one township of land for a seminary of learning, and four sections for the seat of government. Then comes the "proviso," in the very terms of that of Ohio, "that the five foregoing provisions herein offered are on the conditions that the States shall agree by compact that every and each tract of land *sold* by the United States" shall be exempt from taxation "for the term of five years from and after the day of sale." No stipulation about the ownership of the soil—none in regard to the right of the State to tax the property of the United States.

The act authorizing Illinois to form a constitution and come into the Union, approved April 18, 1818, is a transcript of the Indiana act, with slight variations, which I will notice.

The first section, authorizing her to form a constitution and State government, and to come into the Union on an equal footing with the original States, is precisely the same. The sixth section, tendering propositions for "free acceptance or rejection," is the same, with the exception that it does not give the State four sections of land for the seat of government. It also contains the same proviso that "the four foregoing propositions herein offered are on the conditions" that the State will agree by compact "that every and each tract of land *sold* by the United States" shall remain exempt from taxation "for the term of five years from and after the day of sale;" and then it contains the further condition that the bounty lands granted for military services during the war of 1812, while they continue to be held by the patentees, should not be taxed for three years after the issuing of the patents; and the still further condition that the lands of non-resident citizens of the United States should not be taxed higher than the lands of residents. Illinois assented to these three conditions, and in consequence received her school lands, and the other donations, mentioned in the propositions. But there was no compact or stipulation in regard to the title to the public lands, or the right of the State to tax them.

I will now invite the attention of the Senate to the southwestern States, which were admitted into the Union prior to 1820. In these we will find some peculiarities which are calculated to mislead the casual observer, unless critically noted. And among them the first and most peculiar case is that of Louisiana. The act authorizing that State to form a constitution and State government was approved February 20, 1811. By looking into the third and fourth sections of the act, it will be seen that the consent of Congress was given upon eleven distinct conditions, all which were to be complied with before a State government could be formed; and even then the State was not authorized to come into the Union until the constitution should be submitted to Congress, and, if "not disapproved, at the next session after the receipt thereof, the said State shall be admitted into the Union upon the same footing with the original States." Now, let us see what these eleven conditions were; for I apprehend that it is the first instance in which terms have been announced as conditions to the admission of a State into the Union, other than those imposed by the Constitution itself:

1st. That the convention, in behalf of the people of said Territory, shall adopt the Constitution of the United States.

2d. That the constitution of said State shall be republican, and consistent with the Constitution of the United States.

3d. That it shall contain the fundamental principles of civil and religious liberty.

4th. That it shall secure to the citizens the trial by jury in all criminal cases.

5th. That it should secure the privilege of the writ of habeas corpus, conformably to the Constitution of the United States.

6th. That after the admission of said State into the Union, its laws shall be promulgated, and its records of every description shall be preserved, and its judicial and legislative written proceedings conducted in the language in which the laws and judicial and legislative written proceedings of the United States are now published and conducted.

7th. That the convention shall declare, on behalf of the people of said Territory, by an ordinance irrevocable, that they disclaim all right or title to the waste or unappropriated lands lying within the said Territory; that the same shall be and remain at the sole and entire disposition of the United States.

8th. That each and every tract of land sold by Congress shall be and remain exempt from any tax levied by authority of said State, for any purpose whatever, for five years from and after the day of sale.

9th. That the lands belonging to the citizens of the United States residing without said State, shall never be taxed higher than the lands belonging to persons residing therein.

10th. That no tax shall be imposed on the property of the United States.

11th. And that the river Mississippi and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of said State as to other citizens of the United States, without any tax, duty, or toll therefor imposed by said State.

Now, sir, I ask if it is probable that these eleven conditions were prompted by the apprehension that they were necessary in order to save and secure the rights of the United States in respect to the public domain or otherwise? Could such have been the motive? Was it necessary that the people of Orleans Territory should have adopted the Constitution of the United States before they could be permitted to come into the Union under the name of the State of Louisiana? And, having adopted the Constitution as a whole, was it ne-

cessary to proceed to readopt it in detail? Would not the right of trial by jury, and the privileges of the writ of habeas corpus, have been as secure and sacred under the Constitution of the United States, without being specially reënacted, as with it?

And, again, has this Congress any power under the Constitution to command a State of this Union in what language she shall conduct and publish her legislative and judicial proceedings? Upon all these points, I apprehend, there can be no doubt in the mind of any Senator present. There must, then, have been some other considerations growing out of the history and condition of that people, which rendered it prudent and wise to insert all these things in the law, and require the convention to agree to them.

The inhabitants of that territory had recently belonged to a foreign government; they were aliens to us in language, in religion, in laws, in habits of thought, in all the principles of political science, and in everything that concerned the practical workings of our system of Government. It may have been deemed wise and proper, therefore, by the Congress of that day to imbody some of the fundamental principles, axioms, and truisms of our Government, in the act for their admission, with the view of impressing them more firmly upon the minds and consciences of those people. The same remarks will apply with still greater force to the stipulations in respect to the public lands and the navigable waters—not that these stipulations were necessary to protect our rights, but expedient in order to teach them their duties. The Constitution of the United States, the trial by jury, the writ of *habeas corpus*, would have had the same legal effect in that State without as with the compact. And so, I apprehend, it would have been in respect to the public lands and navigable waters. Surely, in a legal point of view, there could have been no more necessity for these stipulations in Louisiana than in Ohio, Indiana, and Illinois, where, as we have seen, no such conditions were required or thought of.

The act authorizing the inhabitants of Mississippi Territory to form a constitution and State government, and to come into the Union, was approved March 1st, 1817. The first section of the act is in the very terms of those I have quoted in regard to Ohio, Indiana, and Illinois. The fourth section is a literal copy of a portion of the third section of the Louisiana act. That clause requiring them to adopt the Constitution of the United States, and to secure the trial by jury, and the writ of *habeas corpus*, is omitted, and the provisions in regard to the public lands and navigable waters are retained. These two States—Louisiana and Mississippi—constitute the exceptions to the general current of authorities; and the departure from the other precedents, must be accounted for by the peculiar circumstances to which I have referred. And in this connection it must be borne in mind, that Indiana followed Louisiana in the order of their admission, and that Illinois was admitted one year subsequent to Mississippi, without any such stipulations. The act authorizing the inhabitants of Alabama Territory to form a constitution and come into the Union, was approved March 2d, 1819. It is a transcript of the Ohio act, with such slight variations as were necessary to adapt it to another Territory. The first section authorizes the inhabitants to form a constitution and State government, and declares "that the said Territo-'ry, when formed into a State, shall be admitted 'into the Union upon the same footing with the 'original States, in all respects whatever." The sixth section tenders certain propositions to the convention "*for their free acceptance or rejection.*"

Then follows the sixteenth section, for schools, the salt springs, the five per centum of the net proceeds of the sales of public lands, and the township for a seminary of learning, &c., as in the States to which I have already referred. It will be observed, that the first section authorized the State to come into the Union, whether she accepted the terms and conditions of the said section or not. She was left "*free*" to accept or reject. If she accepted the propositions, she secured the donations of land and money. If she rejected them, she lost the whole—but still came into the Union. The conditions upon which Alabama received these donations, were somewhat different, and more numerous than those imposed upon Ohio, Indiana, and Illinois. She was required to disclaim all right and title to the public lands lying within her limits, together with her right to tax them; also, a stipulation against taxing the property of non-residents higher than residents, and the usual stipulation against taxing the lands sold by Congress for five years after the day of sale. But it must be borne in mind, that these stipulations were required—not as conditions to her admission—but as the terms upon which Congress would make her the donations of land and money after she was admitted. The act authorizing Missouri to form a constitution and come into the Union, was passed March 6, 1820. The first section provides for the admission of the State "upon an equal footing with the original States, in all respects whatever." The fourth section contains a "proviso"—

"That the constitution, whenever formed, shall be republican, and not repugnant to the Constitution of the United States; and that the Legislature of said State never shall interfere with the primary disposal of the soil by the United States, nor with any regulation that Congress shall find necessary for securing the title in such soil to the *bona fide* purchasers; and that no tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents."

In order to guard against misapprehension, it must be observed that this proviso, like the third section of the bill under consideration, had the force of law, but was not a compact. It was not submitted to the people of the State in the form of a proposition for an ordinance to be accepted by them. The assent of the people was never asked nor given. In that respect these provisions in the Missouri act stand on the same footing with the same provisions in the bill before the Senate. But in the sixth section of the act there were propositions tendered to the people of Missouri "for their acceptance or rejection."

These propositions were five in number, and related to the sixteenth sections for schools; the salt springs; the five per cent. of the net proceeds of the sales of the public lands; four entire sections of land for the seat of government; and thirty-six sections, or one township, for a seminary of learning. Then follows a proviso to this section, "that the five foregoing propositions 'herein offered are on the condition that the con-'vention of said State shall provide by an ordi-

'nance, irrevocable without the consent of the 'United States, that every and each tract of land 'sold by the United States" shall "remain exempt 'from taxation for the term of five years from and 'after the day of sale; and the bounty lands 'granted, or hereafter to be granted for military 'services during the late war, (1812,) shall, while 'they continue to be held by the patentees or their 'heirs, remain exempt, as aforesaid, from taxation 'for the term of three years from and after the 'date of the patents respectively." Here we find that, even while Congress was engaged in making a compact with the State in regard to taxing bounty and other lands, after the title of the United States was divested, it was not deemed necessary to insert any provision in respect to the title of the United States to the public domain, or in respect to the right of the State to tax the lands while they belonged to the Government. The men of that day were not wise enough to conceive that the moment a State was admitted into the Union on an equal footing with the original States, it had a right to seize upon all the public lands within its limits, and convert them to its own use. They were too simple-minded to suppose that there was any difference, in a moral or legal point of view, between laying violent hands upon the property of the Government and that of a private individual. This new doctrine, that you may seize upon the property of the Federal Government wherever you may find it within the limits of a State, under the magical influence of the word "sovereignty," is a refinement upon law and morals unknown to the statesmen of that day.

I have now reviewed in detail all the acts for the admission of new States containing public lands within their limits, during that period when the United States sold their lands upon a credit. We have seen that in every case, except Tennessee, there has been a stipulation assented to by the States asking admission, that the lands *sold by Congress* should not be taxed for five years after the day of sale, in order to prevent any one from acquiring tax-titles to the lands before the United States should receive the purchase money. We have also seen that, with the exception of Louisiana and Mississippi, no State has been required to enter into a conpact, *as a condition to its admission into the Union*, that it would not interfere with the primary disposal of the soil, or tax the property of the United States; and that these two exceptions were under peculiar circumstances, and for reasons not connected with the public lands, which have been fully explained.

From the period when cash sales were substituted for the credit system in the disposal of the public lands, no compact of any description has ever been entered into with any State as a condition to its admission into the Union. Some of them were required to change their boundaries, but none to make a stipulation respecting the public lands. The first State admitted after the period to which I refer was Michigan. The act of admission was approved June 15, 1836. The fourth section provides that nothing in the act contained should be construed to authorize the Legislature of said State to interfere with the primary disposal of the public lands by the United States. The act also provides that the State was admitted on the condition that she should agree to the change of the boundaries prescribed; but there was no provision requiring her to agree to the fourth section, respecting the public lands. On the same day, the act for admission of Arkansas became a law. The eighth section of that act, like the third section of the bill before the Senate, declared the State to be admitted on the "*express 'condition* that the people of said State shall never 'interfere with the primary disposal of the public 'lands within the said State, nor levy any tax on 'the land of the United States within said State." This clause was declared by Congress to be a condition to the admission of the State; but the people were never required to assent to it, or to enter into any compact to that effect. The act for the admission of Florida and Iowa into the Union was approved March 3, 1845. For the first time in the history of the Governmeat two States were admitted in the same act. The first section is in the following words:

"That the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on an equal footing with the original States, in all respects whatsoever."

The second section changes the boundaries of Iowa, and the fourth section, in reference to this change, requires Iowa to agree to the provisions of this act. Florida was not required to assent to it, because no change was proposed in her boundaries. The seventh section provides, "that Iowa and Florida are admitted into the 'Union on the express condition that they shall 'never interfere with the primary disposal of the 'public lands lying within them, nor levy any tax 'on the same whilst the property of the United 'States." This section, it will be observed, is precisely the same as the third section of the bill under consideration. In consequence of the dispute in regard to the boundaries, Iowa did not come into the Union for nearly two years afterwards, when different boundaries were agreed upon, and a compact was entered into in respect to the school lands and the other usual donations to new States. The act admitting Wisconsin into the Union was approved March 3, 1847.

The first section declared Wisconsin to be one of the United States, and received into the Union on an equal footing with the original States; and the fourth section declared that the State was admitted on the fundamental condition that the constitution which had been formed and had not received the sanction of the people, should be adopted by them. This was the only condition required; and it was not complied with, as the people rejected the constitution, in consequence of certain provisions in it in relation to banking, homestead exemptions, and some other matters of internal policy. A new constitution was formed, however, and the State admitted on the 29th of May, 1848, without any conditions.

Now, sir, I have given you a detailed exposition of the acts of Congress for the admission of each of the new States, having public lands within their limits, from the organization of the Government to the present time.

The Senator from Louisiana seems to have been aware that the statute-books would not verify his assumption that there had been a compact entered into with each State admitted into the Union, reserving to the United States the public lands exempt from taxation; and hence he attempts to sup-

ply its place in respect to the States formed out of the territory northwest of the Ohio river, by a clause in the ordinance of the 13th of July, 1787. Certain provisions of that ordinance purport to be articles of compact between the original States and the people and States in said territory, and among those articles is one declaring that the legislatures of said new States should never interfere with the primary disposition of the soil, nor tax the property of the United States.

The Senator seems to exult in the idea that this article in the ordinance rendered a compact with the States at the time of their admission into the Union unnecessary; and hence he infers that this was the reason that no such compacts were entered into with those States. Supposing him to be correct in this supposition, how will he account for the absence of any compact as a condition to the admission of Tennessee, Alabama, Missouri, Arkansas, Florida, and Iowa? The ordinance of 1787 does not relieve him from his difficulties in respect to those States. And still, if I can show any one State in which there has been no such compact, and that the title of the United States to the lands has been held valid, that is as conclusive of the whole question as if there had been no compact with any of the States. But let us examine the ordinance of 1787 for a moment, and see how it affects the question. It was originally adopted by the Congress under the articles of Confederation without competent authority, and consequently had no other validity than the acquiescence of the people, under the necessity of the case. It was never adopted or ratified by the people of those territories, before or after they became States. It was never submitted to the original thirteen States for ratification by them. Hence, although it purports in terms to be a compact between various parties, in point of fact it was never adopted by but one of them, and that one without competent authority to contract.

Early in the first session of the first Congress that assembled under the Constitution, "an act to provide for the government of the territory northwest of the river Ohio" was passed, in which provision was made for carrying the ordinance into effect as a territorial government. The ordinance had the same validity, therefore, as any other act of Congress for the government of the territories, and no more. It was no more a compact in the legal sense of the term than the third section of the bill before the Senate. If the ordinance was sufficient to secure the title of the United States to its lands without the consent of the people of the territory, surely the bill before us will accomplish the same purpose. I now dismiss the subject, so far as it relates to the authorities and precedents growing out of the action of our Government.

I am aware that these dry details must have been tedious and wearisome to the Senate. They have been still more so to me. Yet they were essential to a clear and full elucidation of the subject. The question must be decided upon American authority, and not upon the abstract ideas of Vattel, or the antiquated notions of the civil law, or of the feudal system. We act with reference to our own institutions, and upon the principles of our own Government. When it becomes my duty, as chairman of a committee of this body, to report a bill for the admission of a new State, I review the precedents under our own Constitution. I examine the practice in other cases, and trace the history of our legislation upon the subject from the formation of the Government. I look into the action of all the departments of the Government, and examine the decisions of the courts; and when I find there is one unbroken chain of authority upon the subject, running through our entire history as a nation, I do not hesitate to bring in a bill in accordance with the examples of those who have gone before.

Now, sir, I have a few words to say upon the other branch of the question in regard to the civil law. But before I proceed to that, I must be permitted to make a remark or two upon the ordinance of the State of California upon which the Senator commented so freely. In the first place, that ordinance is not before us for our action. The bill neither ratifies nor rejects it. Then, how could it be properly drawn into the debate as an argument for or against this bill? It has nothing to do with the bill. When the question shall arise, whether that ordinance shall be assented to or not, it will be proper to examine its different provisions, and inquire whether we shall accept or reject it. But until then it can have nothing to do with this question. And yet, sir, the Senator devoted a large portion of his speech to a critical analysis of the ordinance; and in one portion of it, he will pardon me for saying that I think his criticism was hardly justifiable. It was upon that portion in which a verbal error had been committed by the young gentleman who made the copy. A copy was presented here which could not be acted upon before the original arrived. A slight discrepancy was detected between the copy furnished and the one in the volume of debates; and that error is seized upon here to excite a prejudice against the people of California, by the innuendo that a stupendous fraud was in contemplation. No direct charge is made upon anybody, but the intimation is thrown out that some enormous fraud might have been perpetrated under cover of these two copies of the ordinance.

Sir, I think if I had made the discovery, and the explanation was given that it was a mere verbal error of the young man in making the copy, I should have dropped it there, without attempting to fasten upon the people of California the odium of an intended fraud upon Congress. But since that Senator has brought that ordinance into this debate, I have some use which I desire to make of it. That ordinance refutes the last half of his argument. He attempted to fasten upon the people of California the design of seizing and holding the public domain within her limits.

That ordinance expressly repudiates any claim or title to the public lands, and asks Congress to grant a portion of them to the State. This is the official evidence of that convention, that California did not claim, did not pretend to own them, nor assert any right to them. The ordinance goes on to say that California will enter into a stipulation or compact with the United States, and the Legislature is hereby authorized to declare, on behalf of the State, *if such a declaration be proposed by Congress*, that they will not interfere with the primary disposal of the soil under the authority of the United States. Even California deemed it necessary to say that she would make the declaration if Congress proposed it, taking it for granted that, inasmuch as Congress had not required such a declaration on the part of other States, it would

not be considered necessary for her to make it. Yet if Congress desired such a declaration on her part, she was ready to make it, in order to remove all doubt upon the subject, as she did not conceive that she could possibly have any title to the lands.

But there is other evidence—conclusive evidence—that the charge against the State of California of having designed to seize and hold these lands is unjust. The Senator referred yesterday to the resolution introduced into the California convention by Mr. McCarver. I will read:

"*Resolved*, (as the deliberate opinion of this convention,) That the public domain within the limits of this State, in right and justice, belongs to the people of California, and the undisturbed enjoyment thereof ought to be secured to them."

I asked the Senator from Louisiana, during the delivery of his speech, whether that resolution was adopted by the convention. He said no, for the reason that it was not deemed prudent to set up their claim at that time, lest they might not be received into the Union, and that the resolution was rejected solely on that ground. Now, let us look into the debate, and see whether the discussions at the time sustain this declaration. I read from the volume of debates, page 465:

"Mr. McCarver's resolution in relation to the public lands was then taken up.

"Mr. Sherwood. I shall vote against this resolution. I think these lands belong to the Government of the United States. They cost the Government fifteen millions of dollars; and although it may be very well for us to ask Congress to grant them to the State of California, inasmuch as she had no appropriation for the support of a government, I think we cannot say that of right they belong to California.

"Mr. Stewart. I certainly cannot vote for the resolution. It is a doctrine broached some twenty or thirty years ago—a doctrine which can never prevail in the Congress of the United States. It may be popular in the western States, but it is in open violation of the Constitution of the United States.

"The question was then taken, and the resolution rejected."

This is the entire debate. No man spoke in favor of the resolution. Not even the author of it had the courage to defend it. It was rejected without a division, which is an indication that the vote must have been very nearly—if not quite—unanimous. Yet, sir, in the face of this debate, and the vote following it, the Senator from Louisiana tells us that the Convention were in favor of the principle of the resolution, and were only induced to reject it from motives of prudence, with the view of setting up the claim hereafter! The debates and proceedings of that convention justify no such charge against the honor and integrity of its members. The insinuation is denounced as unfounded and unjust by the record itself. They set up no claim to the lands, but with great unanimity repudiated the doctrine, when advanced by one of its members.

Sir, let us go a little further into the proceedings of the Convention. That is not the only resolution which was brought forward.

Mr. Stewart moved the following:

"*Resolved*, That the Congress of the United States be, and they are hereby, respectfully but earnestly solicited to give up to the people of California for a series of years, or so long as may be deemed expedient, all revenue which may be derived from the renting, leasing, or otherwise authorized occupation of the gold placers."

The other resolutions request that the United States will never sell or part with its title to the mines in California, but will throw them open to all citizens of the United States, upon paying a reasonable rent; which rent they ask may be paid into the treasury of California for a limited period, until their revenue from other sources shall be sufficient to defray the expenses of their State government.

And what became of these resolutions? They were also voted down, as asking more than would probably be granted to them, and the ordinance to which the Senator has referred was substituted in their place. Hence you find that the Convention of California neither claimed the lands as her own, nor even asked the Government of the United States to give them the proceeds for a limited time. They asked donations for schools, for internal improvements, and such other purposes as were necessary in new States. They stopped there, willing to put themselves upon the same footing with other States, when they came into the Union, with the exception that they thought they were entitled to a larger quantity in consequence of their peculiar position. The constitution of California is no less explicit, so far as the title of the United States to the land is concerned. It recognizes our title to the fullest extent by the clearest implication, if not in direct terms.

Article 9 of the constitution provides that—

"The proceeds of all lands *that may be granted by the United States to this State* for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States under the act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. *as may be granted by Congress on the sales of the lands in this State*, shall be and remain a perpetual fund, the interest of which, together with all the rents of unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State."

These constitutional provisions clearly show that the people of California, as a people, never dreamed of seizing or claiming any portion of the public lands, under any of these antiquated notions of State sovereignty that are now being promulgated. She repudiates the doctrine, and it is unjust to attribute such a design to her.

Now I have a few remarks to make about the civil law to which the Senator has referred. He told us that by the civil law, which was the law of Spain, the King was the owner of the mineral lands within his dominions. Well, I suppose this will be conceded, and as a consequence, by the revolution of 1821, all the rights of the King descended to the Republic of Mexico; and by the treaty of Guadalupe Hidalgo the rights of Mexico vested in the United States.

Hence the United States have the same right in the public domain in California that the King of Spain had before the revolution, and that the Republic of Mexico possessed at the date of the treaty of peace. We have the same rights—no more, no less. Now, sir, I do not deem it necessary to stop to inquire what these rights may be. If we have no rights, then the Government has nothing to lose, nothing to forfeit, by the admission of California into the Union. If we have rights, they are secured under this bill, according to the authorities I have cited.

But, says the Senator, Philip the Second of Spain issued a decree upon the subject, the trans-

lation of which the Senator has been courteous enough to favor me with:

"It is our pleasure and will that all subjects and persons, whether natives or Spaniards, of whatever nature or condition, rank, or dignity, shall be permitted to extract gold, silver and other metals from the mines, freely and without hinderance, in all parts of the world whatsoever."

The Senator says this decree has been held and pronounced by the leading jurists of Spain to be irrevocable. This decree, then, opened all the mineral lands of Spanish America to the whole world, and invited all mankind to come and dig and work the mines, by paying the prescribed rent. The Senator then bases his argument on the assumed fact that the decree was irrevocable, and proceeded to portray the consequences resulting from that position. He says that if this position be correct, all mankind have an inalienable right to work the gold mines of California; that the Chinese, and the Hindoos, and the Hottentots—the Chilians, the Peruvians, and the Sandwich Islanders—all have an inalienable right to extract gold from those mines. I was glad that the Senator cited Spanish authority for this construction of the decree of Philip the Second. He was too modest to tell us his own opinion upon that point, but assumed on this authority that the gold mines are lost to us forever.

Well, sir, if this be irrevocable, then they are open according to the decree to the whole world, and all mankind have an inalienable right to go, and dig, and work them. But to what conclusion does this lead? And what is the Senator's remedy for the evil? His amendment does not reach the case. It provides that there shall be a compact between California and the United States, securing these mines to us. Why, sir, if his argument be sound, what right have California and the United States to divest the inalienable rights of the Hottentots, the Hindoos, the Chinese, the Sandwich Islanders, and the rest of mankind, to whom the gentleman alluded yesterday, as being entitled to go and work these mines? If your doctrine be true, you prove more than your own amendment can remedy. If that decree be irrevocable, every human being upon the face of this wide globe has an inalienable right in these mines, and no power short of unanimous concurrence can ever secure the benefits of the mines to the United States. Your remedy falls as far short of reaching the evil as either the bill reported by the Committee on Territories or the one introduced by the Committee of Thirteen.

But, sir, I am not willing to assert the infallibility of these distinguished Spanish jurists, who have expressed the opinion that a mere lease during the pleasure of the landlord is an irrevocable decree. I choose to construe that decree according to the plain and obvious import of the language employed. The most you can make of it is, that it is a permit to work in the mines during the pleasure of the sovereign; and every miner who shall enter the country under that permit is a mere tenant at will, and liable to be ejected at any time by notice. That, sir, is the way in which I read that decree. Philip II. had a right to abrogate it the very next day after it was made, if he chose to do so; and I doubt not that it has been modified time and again since its promulgation. And, sir, we as the owners of that soil have a right to abrogate the decree, and to adopt such rules and regulations under the Constitution for disposing of that public domain as the Congress of the United States shall see proper. It is a matter entirely within our own control—a matter with which no other power on earth, in my opinion, can interfere; and, sir, it is a matter which the amendment of the Senator does not reach, and upon which it has not the slightest effect. The argument leads to a conclusion that does not sustain him in the remedy which he proposes. And, sir, what becomes of another position of his, if this be true? His position was, that these lands and mines would escheat to California. Sir, if the decree of Philip II. be in force and irrevocable, these lands and mines cannot escheat to California until the Hottentots and North American Indians surrender their inalienable rights in them. The one position, therefore, destroys the other. Besides, in another part of the Senator's speech, he had all of these very lands, that are now irrevocably gone, selected and taken by California under the ordinance giving her the right to take 500,000 acres of land, and to select also the school sections where she pleased. Certainly California would not have got them under that ordinance, if this doctrine be true. And if the Senator from Louisiana believes and acts upon that doctrine, he ought not to have charged upon California the design of seizing these mines under that ordinance, and appropriating them to her own use. It was unkind to insinuate any such design as that to a State, under these circumstances.

But, sir, could California take these mines under the ordinance she has made? The law of 1841, granting five hundred thousand acres of land, gives a right to the State to select only those which were in the market, and which were not reserved from sale. I need not tell the Senator that all mineral lands are reserved from sale—reserved by law; and no State under the act of 1841 was permitted to select mineral lands of any description as part of the five hundred thousand acres. My own State, with the richest lead mines in the world, unentered and unoccupied, was prohibited the privilege of entering those lead mines under the act of 1841. The State of Missouri was not permitted to enter the copper and iron mines within her limits, under that act; nor was the State represented by the distinguished Senator from Michigan [Mr. Cass] allowed to take the copper mines of Lake Superior, under the same act. Mineral lands, therefore, are excepted, under the operation of that act; and hence California could not have seized upon the mines, if she had tried, or been disposed to do so. Besides, sir, I take it for granted that when we come to make a compact with California, we will provide for all these things in the ordinance itself.

Now, sir, I believe I have answered all the points in the Senator's speech which relate to the public lands in California. My object has been simply to vindicate myself, as the organ of the committee which reported this bill, from the charge of having brought forward a measure the effect of which would have been to divest the title of the United States to all the lands and mines in California. I am surprised that the Senator from Louisiana should have made the assault without having first examined the American authorities. I have gone through them all in detail, for the purpose of showing that, at this day, and in view

of all the precedents and decisions and the uniform practice of the Government, the point ought not to be considered debatable, much less doubtful. The question has been a thousand times decided in all our courts, in actions of ejectment, where the plaintiff claimed title under a patent from the United States, and the decision has been invariably the same way. And, sir, if so many judicial decisions, confirmed by the universal acquiescence of the people of this Union, and sanctioned by the practical exposition of the Government during its entire history, cannot settle a legal question, I ask what sort of authority does the Senator from Louisiana require in the courts of New Orleans to convince the judgments of those courts? If there ever was a legal question which was put beyond the reach of disputation by the weight of authority, it is the very question which the Senator has raised as an objection to the bill before the Senate.

In conclusion, sir, I will only say, that I regret to see such extraordinary efforts made to raise up objections in the way of the admission of California into the Union, and am unable to comprehend why it is, that you are disposed to deal with so much more rigor in the case of California than you have shown to any other State applying for admission. Why is it, that she should be so harshly dealt by? Has she no claims upon your sympathies and your justice? Is not your faith and your honor pledged to California to give her government and protection? How, sir, have you redeemed that pledge? How have you fulfilled your treaty stipulations? The only law you have extended to her is the taxing power; the only administrators of justice you have sent her are the tax-gatherers. You leave her citizens without protection as to life, as to property, as to person; you refuse to furnish her money to bear her expenses; you refuse to give her that protection which all other people in the United States have received at your hands, at the same time that you extract hundreds of thousands of dollars from her through your custom-houses; and when she, after waiting patiently for a territorial government, has lost all hope of that, and has been driven to form a government of her own, you apply a rule to her with technical objections, and enforce them with a rigor never known or attempted to be exerted against any other State asking admission into this Union.

Sir, if the people of California have no claims upon your sympathies, you must recollect that they have a right to demand justice at your hands. What objection has been urged to the admission of California that did not exist in some one or more of the States which have already been admitted into the Union? I know of none. I have listened attentively to the whole debate. I have noted the objections, one by one, as they have been advanced, and I have heard no objection which might not have been urged with equal force, but was not considered insuperable, in reference to other States. You must, therefore, depart from established usage, abandon the precedents, and overturn the authorities, before you can exclude California from the Union. What has she done to justify this treatment? Sir, I fear the world will come to the conclusion that her sin—her only crime—was that she chose, in the plenitude of her wisdom and power, to exclude the institution of slavery from her borders.

A Senator. That is it.

Mr. DOUGLAS The world will be likely to come to this conclusion, because they will be unable to perceive any other objection which you have not overcome in other cases. California had a right to exclude or admit slavery as she pleased; and I, as the representative of one of the States of this Union, have no right to vote against her because of the choice she may make in this respect. I know it is denied that her admission is opposed on this ground, and I have had hopes that our action would satisfy the public that there were no grounds for suspicion or apprehension in this respect. But, sir, when you investigate the points, when you take up the objections in detail, when you see that they have all existed in some form in other States, and did not in their case constitute insuperable objections, I fear that we will be driven—unwillingly driven—to place her rejection—if, indeed, she shall be rejected—upon the grounds to which I have referred.

Friday, *June* 28, 1850.

In reply to some further observations of Mr. Soule,

Mr. DOUGLAS said: I shall be very brief in the reply which I have to make to some points in the speech of the Senator from Louisiana, and I shall advert only to those in which he addressed himself to me directly and specifically. He has controverted the history that I gave the day before yesterday of the legislation of Congress in regard to the admission of new States into the Union, not by denying the truth of any one fact which I stated, nor by showing that the facts were not fairly brought to the notice of the Senate; but he has discovered, as he supposes, one new fact which overthrows the whole. He admits, as I understand, that Tennessee was brought into the Union without any compact being formed with her at the time of her admission into the Union or subsequent thereto. Such I understand to be the admission of the Senator by the argument he has advanced. Then, sir, what is the discovery he has made which enables him to say that there was a compact with the people of Tennessee which reserved to the United States their rights in the soil and dominion over the public lands? He tells us that the ordinance of 1787 was extended over that country. That is very true. I have the law here. The act of the 26th May, 1790, provides that the ordinance for the government of the people of the territory northwest of the Ohio shall extend to the territory south of that river. Mr. D. read the act to the Senate.

Mr. SOULE. I am clearly misunderstood. The deed of cession of North Carolina to the United States shows that this reservation was made; and as it was made then, of course it took its effect prior to that portion of the territory then ceded by North Carolina.

Mr. DOUGLAS. True, sir, the deed of cession from North Carolina transferred the soil to the United States with the territory; and so did the treaty with Mexico transfer the soil of California and New Mexico to the Government of the United States; and so did the Florida treaty transfer the soil of that territory to the United States; and the same may be said of the territory of Louisiana under the treaty with France. Thus it was that we derived our title to all those countries. These

deeds of cession and treaties are our title-papers, and they all stand on an equal footing. These conveyances by treaties and deeds of cession vest the title in the United States, and there it must remain until divested under that clause of the Constitution which authorizes Congress to make needful rules and regulations for the disposal of the territory and other property of the United States. The Constitution is imperative on this point. You cannot transfer these lands under that clause which provides for the admission of new States into the Union. The object of these two provisions of the Constitution, and the powers to be exercised under them, are entirely different and distinct. The one provides for the admission of new States, and the other for the disposal of the public domain. Both being provided for in different articles of the same instrument, you can no more dispose of the public lands, under the clause for the admission of new States, than you can admit new States under the clause providing for the disposal of public lands. When you shall have admitted California into the Union under the provision of the Constitution pertaining to that subject, it will be entirely competent for Congress to dispose of the public lands within her limits, in obedience to the other clause to which I have referred. But the Senator from Louisiana has cited the fact that the ordinance of 1787 was extended over the State of Tennessee while a territory, as evidence that there was a compact with the people of that State, reserving the public lands to the United States. True, the ordinance was extended to that territory; but how? By a compact? By an agreement with the people of Tennessee? Not at all. It was done by the act of Congress which I hold in my hand and have read to the Senate. There was no compact—no agreement. The people of Tennessee never assented to the ordinance, and were never invited or expected to assent to it. It was adopted by Congress as an approved form of territorial government. It had just the force of an ordinary act of Congress, and no more. The same remarks are true of the adoption of the ordinance in Alabama and Mississippi. Congress did not propose it to them as a compact, and the people did not accept of its terms and conditions. It had the force of law, because it was an act of Congress, but ceased to exist when those territories erected State governments and were received into the Union.

But, sir, the Senator from Louisiana has fallen into another error in regard to that ordinance. He seems to be under the impression that it was a compact between the United States and the States and Territories northwest of the Ohio river, assented to and adopted by both parties. It is true that the ordinance purports upon its face to be a compact, but it was never submitted to the people of those States and Territories for ratification. It was never adopted by the people of Ohio, Indiana, Illinois, Michigan, and Wisconsin, or either of them. Congress prescribed it to them as the charter of their territorial governments, and they acquiesced in it, during their territorial condition, the same as they did in all other acts of Congress. And if any portion of that ordinance can be supposed to be in force now, since the admission of those States into the Union, it can certainly have no more effect upon those States than the third section of this bill will have upon the State of California. Both reserve to the United States all control over the public domain, free from molestation or taxation by those States. If, therefore, the ordinance, which had no other validity than the fact of having been adopted by Congress, was sufficient to protect the rights of the United States within the limits of those States, without having been accepted by them, surely the third section of this bill, which emanates from the same authority, and embraces the same provisions, will be sufficient to produce the same results in California. Alabama has also been referred to, as having entered into a compact with the United States in reference to the public lands, in addition to the ordinance. That is very true, sir, and I read the terms of it to the Senate the other day. It is to be found in the act of Congress authorizing the people of the Territory of Alabama to form a constitution, and come into the Union. But, sir, the Senator from Louisiana is entirely mistaken as to the nature and object of that compact. The terms were not proposed by Congress as conditions upon the acceptance of which Alabama was to be admitted into the Union, or to be excluded if she rejected them. Her admission was not made dependent upon the acceptance of those propositions. The first section of the act provided for her admission into the Union unconditionally, upon an equal footing with the original States, in all respects whatsoever. Then the sixth section submitted certain propositions to the new State, "for her free acceptance or rejection." If she accepted them she was in the Union, and if she rejected them, still she was in the Union.

[Here Mr. DOUGLAS read the sixth section of the act to the Senate.]

The only effect of the rejection of these propositions would have been that Alabama would have forfeited her rights to the sixteenth section for schools, the two townships for a seminary of learning, and the five per cent. on the sales of the public lands for education and internal improvements, and the other donations provided for in the compact. Her admission into the Union did not depend, therefore, in any degree, upon her acceptance of these terms.

The Senator from Louisiana has unconsciously fallen into the same mistake in regard to the compacts with other States. With the exception of Louisiana and Mississippi, which I fully explained the other day, none of them were required to be assented to as conditions of admisssion, but simply as the terms upon which they could receive their school lands and the other donations usually made to new States. In regard to Florida and Iowa, I have only to remark that, by reference to the act of the 31 of March, 1845, which I hold in my hand, it will be seen that these States were admitted without any compact whatever in reference to the public lands. Objections were made to the boundaries of Iowa, and she was required to change them, as a condition of her admission; and this dispute about the boundaries kept her out of the Union nearly two years. The usual grants of land and other donations were subsequently made to each of those States, and Iowa entered into the usual compact, while Florida has never done so to this day. I repeat, therefore, that the history of our legislation upon this subject stands precisely as I presented it to the Senate the other day.

Now, a few words about the mines. The Senator complains that I did not understand the effect

of his amendment in reference to the mines. He says that his amendment does not propose to reserve to the United States the ownership of the mineral lands, but merely to retain the control of them. Now, what is his argument? It is, that the mines do not belong to the United States; that, under the Spanish laws, they were vested in individuals; that they have become private property; that the United States have no more power over them than they have over the domicil of any private citizen of the United States resident in the country. Sir, if that be the case, let me ask, what right have we to reserve from California the privilege of controlling and regulating private property within her limits? You have no more right to do that, than you have to reserve the privilege of controlling the farms, storehouses, workshops, and other property in the other States in the Union. If you make that reservation in relation to private property, with the view of taxing it for the benefit of the United States, you will deprive the State of California of the chief source of revenue for the support of her State government. If those mines are public property—as I apprehend they are—you have a right to reserve them, and collect the rents for the benefit of the United States. But if they were private property, as the Senator from Louisiana insists, they have passed beyond the control of this Government, and become the rightful subject of taxation by the State of California, as much as any other species of private property within her limits. Have you the power, much less the will, to make this unjust and odious discrimination between California and all the other States of the Union? When she is admitted, she must come into the Union on an equal footing with the original States, in all respects whatsoever. The United States once held and leased extensive mineral lands in Illinois, Missouri, Iowa, Wisconsin, and Michigan. The people of those States have had ample experience in this system of leasing the public lands. It was found to be injurious and ruinous to the country where the mines were situated, without yielding a dollar of revenue to the Government, after defraying the expenses of keeping up the system. The Representatives of those States made war upon this policy, until at last the Government abandoned it, and brought the mineral lands into market, and sold them as other lands. Did the United States attempt to retain any control over these mines, after they had thus become private property? Certainly not. The moment the title of the United States was divested, they were placed upon a footing with all other private property, and became subject to State taxation. They constitute one of the sources from which the States derive their revenue for defraying the expenses of their local governments. Why shall California be deprived of that which is conceded as a matter of right to every other State in the Union? Is she not entitled to come into the Union on an equal footing with the other States of the Confederacy? If, therefore, the amendment is designed to accomplish what the Senator now explains it to mean, certainly this Senate will not be guilty of the monstrous injustice of attempting to seize, for the benefit of the United States, the revenue which California derives from the legitimate taxation of private property. If, on the other hand, the argument of the Senator be correct in supposing these mines to have become private property, and the object of his amendment be to reclaim them, his argument proves too much; because it renders his amendment nugatory and useless. A compact between California and the United States cannot deprive an individual of his rights or property, which have already become vested, and been reduced to possession. Taking either view of the subject, therefore, I see no reason for changing the opinions which I expressed the other day.

Now, sir, with these remarks, I surrender the question into the hands of those who are desirous of continuing this discussion. I regret that I have been compelled to occupy so much of the time of the Senate. Indeed, I should not have said a word upon the amendment of the Senator from Louisiana, if he, in the course of his speech, had not rendered it imperatively necessary. My first speech was drawn out by his; and in it I confined myself strictly to those portions of his argument which were directed against the bill, and for which I was responsible, having written and first brought it before the Senate. To-day the Senator saw fit to renew the assault, and, of course, I was compelled to reply to the new matters brought into the debate. I now take leave of the subject.

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